

DRAFT

ORDINANCE NO.

**AN URGENCY ORDINANCE OF THE CITY OF SAN JOSE
AMENDING CHAPTER 20.80 OF TITLE 20 THE SAN
JOSE MUNICIPAL CODE TO ADD NEW PART 9.8
CONFIRMING THE PROHIBITION ON CULTIVATION,
PROCESSING, MANUFACTURE, DISTRIBUTION,
TESTING, AND SALE OF NONMEDICAL MARIJUANA;
CONFIRMING LIMITATIONS ON PERSONAL
CULTIVATION OF NONMEDICAL MARIJUANA SHOULD
PROPOSITION 64 PASS; AND SETTING FORTH THE
FACTS CONSTITUTING SUCH URGENCY**

WHEREAS, the provisions of this Ordinance have been found to be not a project under the California Environmental Quality Act of 1970, together with regulations and guidelines promulgated thereunder (including without limitation Section 15378 of the CEQA Guidelines), and is also exempt from CEQA pursuant to Section 15061(b)(3) because it has no potential for causing a significant effect on the environment, and Section 15308 as a regulatory action under the City's police power to assure maintenance and protection of the environment pending evaluation and adoption of potential local legislation and regulation; and

WHEREAS, the City Council is the decision-making body for this proposed Ordinance; and

WHEREAS, the City Council has read, considered and approves said exemption prior to taking any approval actions on this proposed Ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Chapter 20.80 of Title 20 of the San Jose Municipal Code is hereby amended by adding a Part to be numbered and entitled and to read as follows:

Part 9.8
Cultivation, Processing, Manufacture, Distribution, Testing, and Sale of
Nonmedical Marijuana

20.80.780 Prohibition of Cultivation, Processing, Manufacture, Distribution, Testing, and Sale of Nonmedical Marijuana

The purpose of this Part is to confirm that:

- A. The cultivation, processing, manufacture, distribution, testing, and sale of nonmedical marijuana, including marijuana products, is a prohibited land use in all zoning districts in the City of San José. Nonmedical marijuana is any marijuana or marijuana product, as defined in Division 10 of the California Health and Safety Code, which is not regulated by the City under Chapter 6.88 of Title 6 of this Code.

- B. Notwithstanding, Subsection A. , if Proposition 64 (also known as the Control, Regulate, and Tax Adult Use of Marijuana Act (“AUMA”) passes at the November 8, 2016 statewide general election, not more than six (6) living marijuana plants may be planted, cultivated, harvested, dried, or processed by a person over the age of twenty one (21) inside a private residence, or inside an accessory **structure building** to a private residence that is fully enclosed and secure and located upon the grounds of the private residence, as an incidental use to the primary private residential use, provided that marijuana in excess of 28.5 grams produced by plants kept for indoor personal cultivation under this Part must be stored in a locked space on the grounds of the private residence not visible from

the public right-of-way. Any personal cultivation under this Part shall comply with all requirements of this Code, including without limitation, Chapter 17.12 of this Code and Title 24 of this Code.

20.80.790 Sunset Clause

- A. Subsection B. of Section 20.80.780 of this Chapter shall automatically sunset and have no force or effect in the event AUMA fails to pass at the November 8, 2016 statewide general election.

- B. In the event AUMA fails to pass at the November 8, 2016 statewide general election, the cultivation, processing, manufacture, distribution, testing, and sale of nonmedical marijuana, including marijuana products, whether indoors or outdoors, shall continue to be prohibited in all zoning districts of the City of San Jose.

SECTION 2. This Ordinance is declared by the City Council to be an urgency measure necessary for the immediate preservation of the public peace, health or safety. The facts constituting such urgency are as follows: The AUMA has qualified for the November 8, 2016 statewide general election. If passed by a majority of California voters, the measure would legalize nonmedical marijuana use for those 21 years of age and over. Portions of the AUMA will take effect as soon as the day after Election Day; specifically, recreational marijuana use by adults and cultivation in private residences. The potential health and safety impacts of nonmedical marijuana cultivation, processing, manufacture, distribution and sale uses include offensive odors, criminal activity, degradation of the natural environment, and indoor electrical fire hazards.

SECTION 3. This Ordinance shall become effective immediately upon its adoption pursuant to Section 605 of the Charter of the City of San Jose and shall remain effective until the effective date of any superseding ordinance.

ADOPTED this _____ day of _____, 2016, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk